

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 82859

RECEIVED

NOV 23 2018

Department of Water Resources
Eastern Region

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at www.idwr.idaho.gov.

Name of Applicant(s) Wayne Properties LLC

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a [Part 2A](#) report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer [Part 2B](#) for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. ([Fee schedule](#) is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☒ ☐ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☒ ☐ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). **
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☒ ☐ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System ([GIS](#)) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see [fee schedule](#).
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. ([Attachment WSB](#))
- ☐ ☒ #10 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

RECEIVED

NOV 23 2018

Department of Water Resources
Eastern Region

Name of Applicant(s) Wayne Properties LLC Phone _____

Mailing address 9103 Alta Drive Unit 207, Las Vegas, NV 89145 Email _____

- ☒ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Robert L. Harris Phone (208) 523-0620

Mailing address PO Box 50130, Idaho Falls, ID 83405 Email rharris@holdenlegal.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Robert L. Harris
Signature of Applicant or Authorized Representative

Robert L. Harris, Attorney
Print Name and Title if applicable

November 21, 2018
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.

The purpose of this transfer is to simply rearrange the place of use to match the shapefile for 85-8021 to the land being irrigated. This will be helpful for future transfers of this water right to the Blackhawk subdivision property. The transfer results in a shifting of only 7 acres.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☒ ☐	35-8021	4.36 cfs	Irrigation	4/1 to 11/1	Ground water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 4.36 cfs cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 0.30 cubic feet per second and/or _____ acre-feet per year.

3. Point(s) of Diversion:

- ☒ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA.
 Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
1S	36E	4					2		10	24	5	9	31	1					82
		5				3									21	2	8	25	59
		8	8	12	1	19									30	1		2	73
		9										4							4
Total Acres (for irrigation use)																			218

PLACE OF USE DESCRIPTION Water Right Report

TWP	RGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S	36E	4					1		10	23	6	9	31						80
		5				3									15	3	9	27	57
		8	5	16	5	18									32	1		2	79
		9										2							2
TOTAL																			218

PLACE OF USE DESCRIPTION Shapefile

TWP	RGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S	36E	4					2		10	24	5	9	31	1					82
		5				3									21	2	8	25	59
		8	8	12	0.5	19									30	0.5		2	72
		9						1			4								5
TOTAL																			218

DIFFERENCE IN ACRES

TWP	RGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S	36E	4					-1			-1	1			-1					-2
		5													-6	1	1	2	-2
		8	-3	4	4.5	-1									2	0.5			7
		9					-1				-4	2							-3
TOTAL																			0

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued**

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Well and pump into pressurized pipeline.

- b. Who owns the property at the point(s) of diversion? DC Farms LLC

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

The applicant purchased Water Right No. 35-8021 and either leases it back to D C Farms LLC or moves portions of it to the Blackhawk subdivision (see Water Right Nos. 25-14460, 25-14461, and 25-14463).

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: _____

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

Authorized place of use will be rearranged.

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

None

- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- | | | |
|--------------------------|-------------------------------------|---|
| ☐ | ☒ | undergone a period of five or more consecutive years of non-use, |
| ☐ | ☒ | currently leased to the Water Supply Bank, |
| ☐ | ☒ | currently used in a mitigation plan limiting the use of water under the right, or |
| ☐ | ☒ | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |

If yes, describe:

[illegible]

8 2 8 5 9

Attachment No. 1
Documentation Identifying
Officers Authorized to Sign

Department of State: Division of Corporations

HOME

About Agency
Secretary's Letter
Newsroom
Frequent Questions
Related Links
Contact Us
Office Location

SERVICES

Pay Taxes
File UCC's
Delaware Laws Online
Name Reservation
Entity Search
Status
Validate Certificate
Customer Service Survey

INFORMATION

Corporate Forms
Corporate Fees
UCC Forms and Fees
Taxes
Expedited Services
Service of Process
Registered Agents
Get Corporate Status
Submitting a Request
How to Form a New Business Entity
Certifications, Apostilles & Authentication of Documents

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: 5505881 **Incorporation Date / Formation Date:** 3/28/2014 (mm/dd/yyyy)

Entity Name: WAYNE PROPERTIES LLC

Entity Kind: Limited Liability Company **Entity Type:** General

Residency: Domestic **State:** DELAWARE

REGISTERED AGENT INFORMATION

Name: THE FIRST STATE REGISTERED AGENT COMPANY

Address: 1925 LOVERING AVE

City: WILMINGTON **County:** New Castle

State: DE **Postal Code:** 19806

Phone: 302-652-2900

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

Would you like ☐ Status ☐ Status, Tax & History Information

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Attachment No. 2a
Water Right Ownership
Documentation

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

11/20/2018

WATER RIGHT NO. 35-8021

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WAYNE PROPERTIES LLC 9103 ALTA DR UNIT 207 LAS VEGAS, NV 89145 (208)569-8194
Original Owner	ROBERT LEE SMITH 663 E 1275 N SHELLEY, ID 83274 2083573041

Priority Date: 02/19/1982

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	11/01	4.36 CFS	872 AFA
Total Diversion			4.36 CFS	

Location of Point(s) of Diversion:

GROUND WATER|SESESE|Sec. 05|Township 01S|Range 36E|BINGHAM County

Place(s) of use:

Place of Use Legal Description: IRRIGATION BINGHAM County

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<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>

01S	36E	4	3	NEN w	1	SWNW	10	SENW	23		
				NESW	6	NWSW	9	SWSW	31		
		5		SENE	3						
				NESE	15	NWSE	3	SWSE	9	SESE	27
		8		NENE	5	NWNE	16	SWNE	5	SENE	18
				NESE	32	NWSE	1	SESE	2		
		9		NWSW	2						

Total Acres: 218

Conditions of Approval:

1. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Dates:

Licensed Date:

Decreed Date: 04/30/2002

Permit Proof Due Date: 5/1/1983

Permit Proof Made Date: 4/28/1983

Permit Approved Date: 4/15/1982

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 02/19/1982

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 4

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

82859

Attachment No. 4

Power of Attorney

[Search again](#)

Results (as of 11/20/18)

Robert Lynn Harris

Status

Active

Admittance Date

09/30/2004

Firm

Holden, Kidwell, Hahn & Crapo, PLLC

Mailing Address

PO Box 50130

Idaho Falls, ID 83405

Phone

(208) 523-0620

Phone Ext**Fax**

(208) 523-9518

Bar Email Address

rharris@holdenlegal.com

Website Address

www.holdenlegal.com

Court eService Email

efiling@holdenlegal.com

Need a correction?

Is something not correct? Please use the [Address Change Form](#)

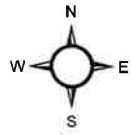
The information above is based on the Idaho State Bar records as of the date listed above. To send us an update on your own listing, please use the online [Address Change Form](#) or send an email to the Licensing Department. Please notify the Licensing Department if you find that another attorney's information is incorrect. Questions on attorney status and good standing should also be directed to the Licensing Department at (208) 334-4500.

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Attachment No. 7a

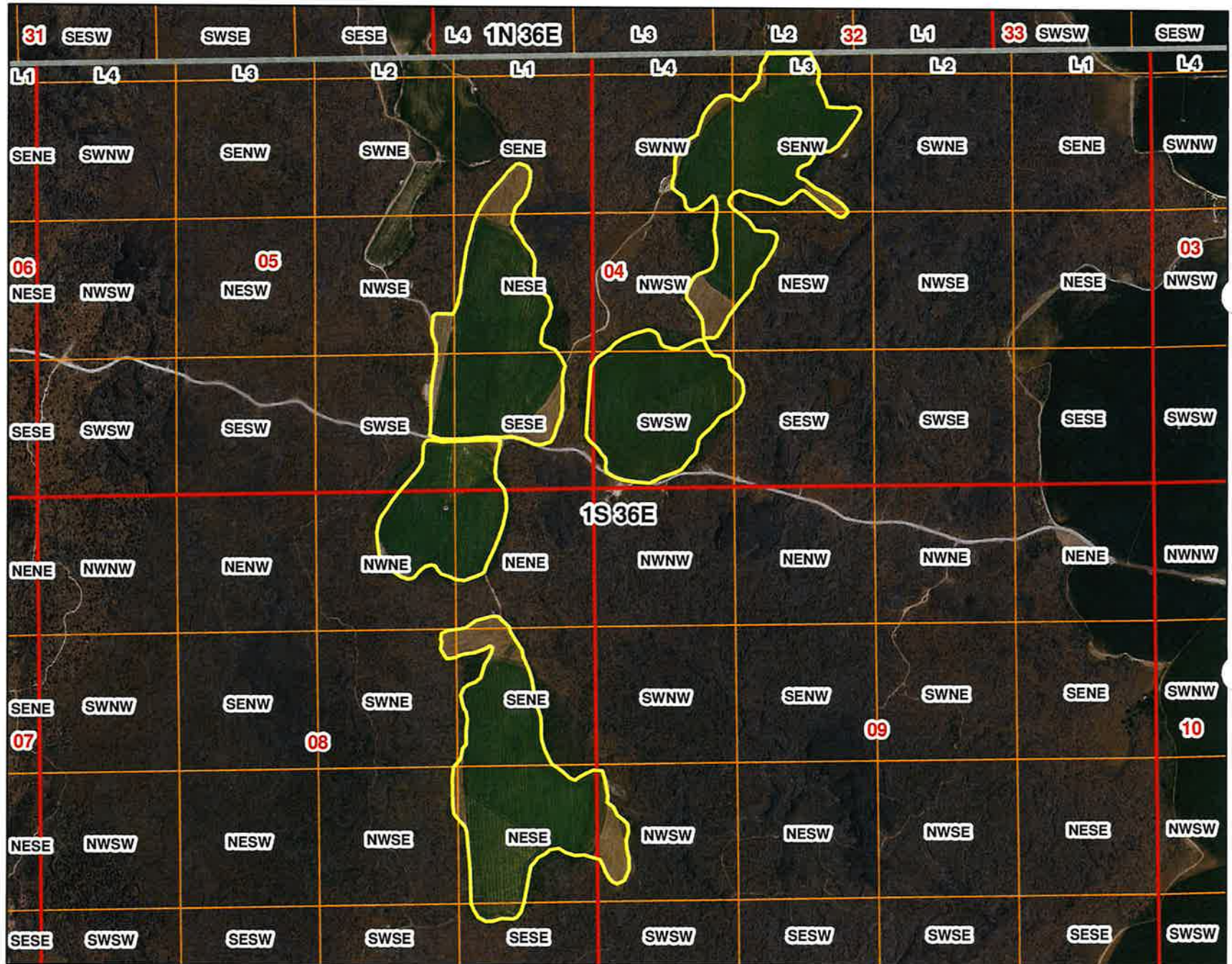
Map

WAYNE HOLDINGS LLC TRANSFER



Legend

- Revised 35-8021
- TR Lines_2014
- Section Lines_2014
- Quarter Quarters_2014

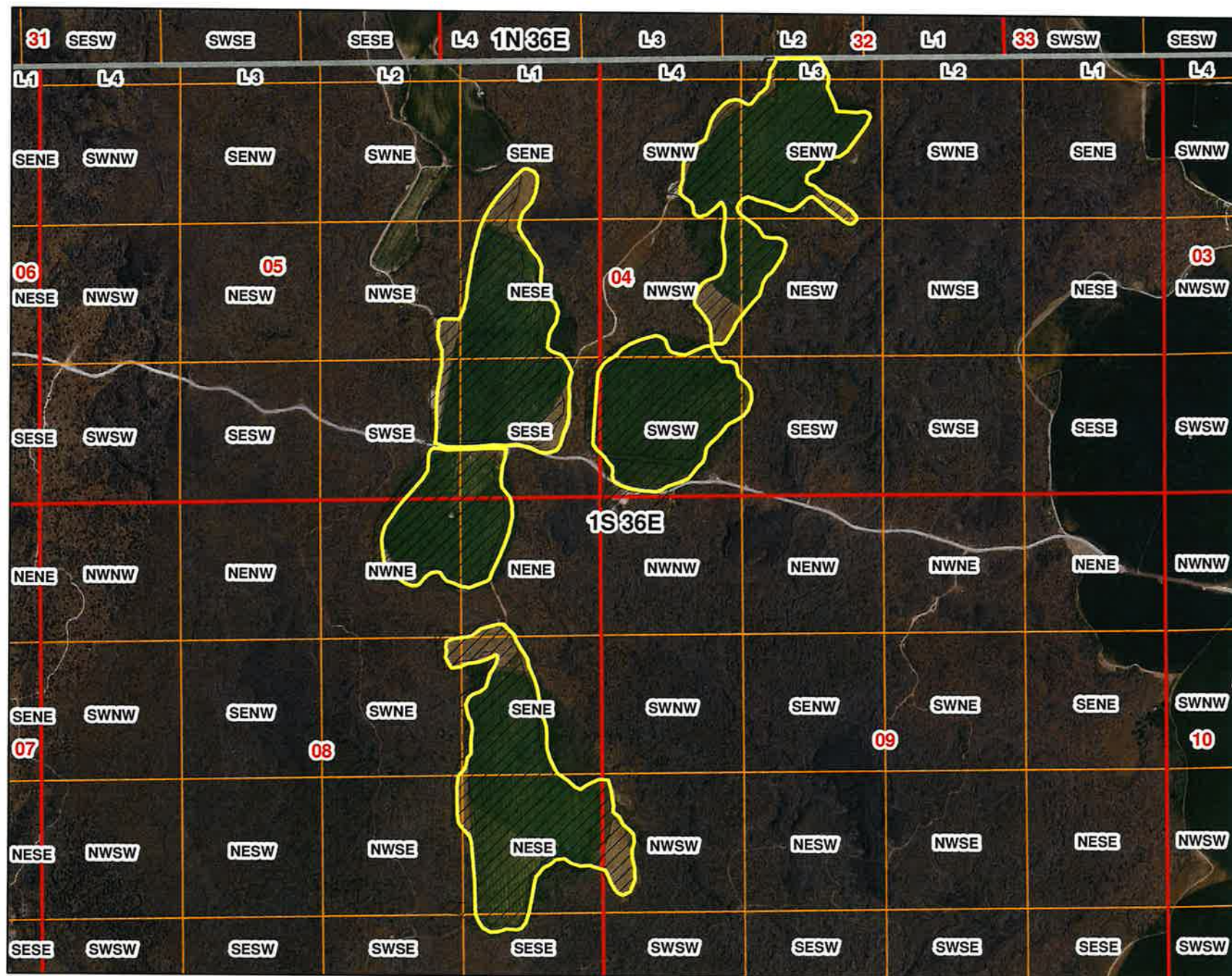
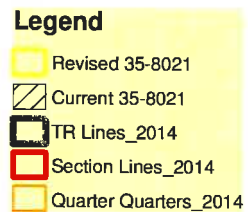


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2017 NAIP Aerial Photo

0 0.425 0.85 1.7 Miles

00
20
00
57
50

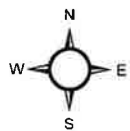


2017 NAIP Aerial Photo

A horizontal number line representing distance in miles. The line starts at 0 and ends at 1.7 Miles. Major tick marks are labeled at 0, 0.425, 0.85, and 1.7 Miles. There are also minor tick marks between these major values.

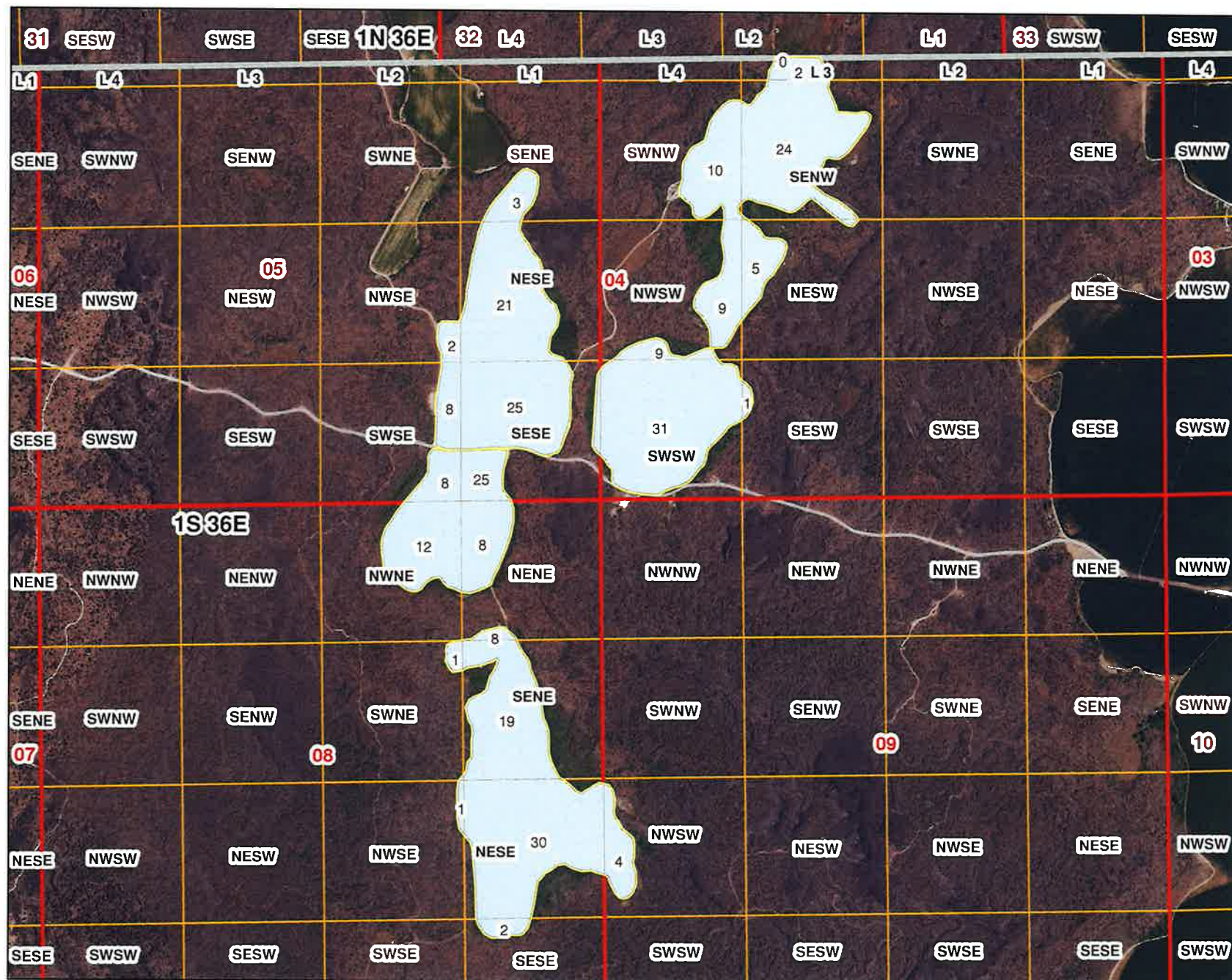
Attachment No. 7b
Map (GIS shapefile)

WAYNE HOLDINGS LLC WATER RIGHT

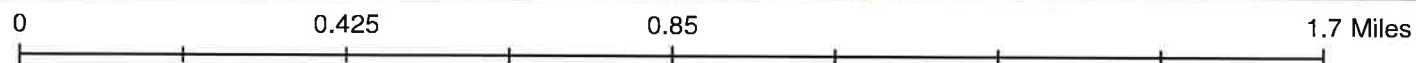


Legend

-  Acres QQ Revised
-  Revised 35-8021
-  TR Lines_2014
-  Section Lines_2014
-  Quarter Quarters_2014

[illegible]

2017 NAIP Aerial Photo



PTC 634687

WATER RIGHT LEASE AGREEMENT

THIS WATER RIGHT LEASE AGREEMENT (this "Agreement") is made and entered into to be effective as of the 1st day of January, 2018 (the "Effective Date"), by and between **Wayne Properties LLC**, a Delaware trust, whose address is 9103 Alta Drive Unit 207, Las Vegas, Nevada 89145 (hereinafter "Lessor"), and **D.C. Farms Limited Liability Company**, an Idaho limited liability company, whose address is 578 N. 100 W., Blackfoot, Idaho 83221 (hereinafter "Lessee"). Lessee and Lessor are individually a "Party" and together the "Parties".

RECITALS:

- A. Contemporaneous with the execution of this Agreement, Lessor has purchased Water Right No. 35-8021 (the "Water Right") from Lessee, which is a water right that was decreed on April 30, 2002 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of the State of Idaho. The Water Right is more fully described in the report obtained from the Idaho Department of Water Resources ("Department" or "IDWR") attached hereto as **Exhibit 1**.
- B. The Water Right is currently authorized to divert 4.56 cfs and 912 acre-feet per year for the irrigation of 228 acres.
- C. The Lessor intends to transfer portions of the Water Right from land owned by Lessee to be used for residential development and future development.
- D. Lessor desires to lease to Lessee the portion of the Water Right that has not yet been transferred from Lessee's place of use, subject to the terms of this Agreement.

AGREEMENT:

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

- 1. Property Leased. During the Term of this Agreement, Lessor hereby agrees to lease annually to Lessee the portion of the Water Right appurtenant to Lessee's property.
- 2. Term: The Term of this Agreement shall be from the date Lessor purchases the Water Right from Lessee until the first to occur of: (a) November 30, 2022; (b) all of the Water Right has been transferred from Lessee's property under paragraph 5 below; or (c) Lessee has elected to terminate this Agreement under paragraph 5 below.
- 3. Lease Price. [REDACTED]

- [REDACTED]
- [REDACTED]
4. Payment of Lease Price. The Lease Price shall be paid on or before April 15th of each year of the Term.
 5. Water Right Transfers. Lessor shall have sole and absolute right to transfer all or any portion of the Water Right—up to the entirety of the Water Right—from Lessee's property. On or before December 1st annually, Lessor shall notify Lessee of the portion of the Water Right that Lessor intends to transfer from Lessee's property prior to the next irrigation season. The Lease Price shall be based upon the portion of the Water Right that will remain appurtenant to Lessee's property following such transfer, regardless of whether such transfer has been approved prior to the next irrigation season. In the event Lessor notifies Lessee after the December 1st deadline of Lessor's intent to transfer a portion of the Water Right, Lessor may proceed with the transfer application but shall inform the Department that it is not to be effective until the end of the next irrigation season. In the event any transfer will leave less than 75 acres of water appurtenant to Lessee's property, Lessee may terminate this Agreement without penalty by providing written notice of termination to Lessor within 14 days after Lessor notifies Lessee if Lessor's intent to file such transfer.
 6. Designation of Transferred Acres. Prior to submitting any application to transfer a portion of the Water Right from Lessee's property, Lessor shall ask Lessee to identify which acres Lessee desires to dry up in connection with such transfer. If Lessee identifies such acres within 14 days after Lessor's request, Lessor shall designate such acres in the transfer application to IDWR. If Lessee does not respond to Lessor's request within 14 days of such request, Lessor shall first designate acres to be transferred that are not covered under center pivot irrigation.
 7. Assessments. Lessee shall be responsible for all monetary assessments from Bingham Ground Water District, the Idaho Department of Water Resources, or any other entity or agency that pertain to the portion of the Water Right that remains appurtenant to Lessee's property.
 8. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including

equitable relief), Lessee shall be deemed in default hereof if Lessee files a petition in bankruptcy or is adjudicated bankrupt or insolvent, Lessee makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its property, or institutes proceedings for its reorganization, in which case, in addition to any other remedies or rights Lessor might have, Lessor shall have the power and authority to notify the Department that the Application for Transfer has been withdrawn.

9. Dispute Resolution. Any substantial dispute between the parties will be resolved in accordance with the following provisions.
- (a) Good Faith Negotiation. Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation. The written notice shall include a general statement of the claims and positions of the aggrieved party. This statement need not be complete and will not limit the claims of a party in any future proceeding. The statement shall indicate it is being submitted under the dispute resolution process of this Agreement. If the parties cannot resolve the dispute within 30 days after receipt of the written statement, the aggrieved party may proceed with mediation.
 - (b) Mediation. If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual agreement of the parties. Unless otherwise agreed, the mediation will be held in Bonneville County, Idaho. Mediator costs will be split equally between the parties.
 - (c) Litigation. Litigation is allowed between the parties only (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement agreement entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief shall not excuse the parties from participating in good faith negotiation and mediation as set forth above.
 - (d) Attorney Fees. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs, but not to exceed the total cumulative liability of the non-prevailing party.
 - (e) Governing Law, Jurisdiction, and Venue. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction and agree that Bingham County is the proper venue.
 - (f) Exclusive Procedures. The procedures specified in this Section 9 shall be the sole and exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the procedures specified in this Section 9 are pending.

10. Miscellaneous.

- (a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.
- (b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

<u>Lessor</u>	<u>Lessee</u>
Wayne Properties LLC 9103 Alta Drive Unit 207 Las Vegas, Nevada 89145	D.C. Farms Limited Liability Company 578 N. 100 W. Blackfoot, Idaho 83221
<u>Lessor's Representative</u>	<u>Lessee's Representative</u>

- (c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Water Right. Neither Lessee nor Lessor shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- (d) Broker. It is understood and agreed by and between the Parties that the transaction herein contemplated does not involve a broker for either Lessor or Lessee. To the extent any broker commissions are owed as a result of this transaction by Lessee, Lessee agrees to be solely liable therefore, and Lessee agrees to indemnify Lessor from any such commissions. To the extent any broker commissions are owed as a result of this transaction by Lessor, Lessor agrees to be solely liable therefore, and Lessor agrees to indemnify Lessee from any such commissions.
- (e) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more

of all such rights and remedies may be exercised at the same time or separately as desired.

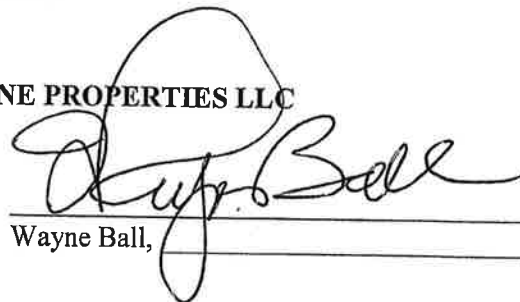
- (f) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- (g) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
- (h) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.
- (i) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (j) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- (k) Essence of Time. Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"LESSOR"

WAYNE PROPERTIES LLC

By:


Wayne Ball,

"LESSEE"

**D.C. FARMS LIMITED LIABILITY
COMPANY**

By:

 
David Cooper
Managing Member

Exhibit 1 **Water Right Report**

Page 2 of 4

WATER RIGHT NO. 35-8021

As Modified by Transfer No. 81960

In accordance with the approval of Transfer No. 81960, Water Right No. 35-8021 is now described as follows:

Right Holder: DC FARMS LLC
578 N 100 W
BLACKFOOT, ID 83221

Priority Date: 2/19/1982

Source: GROUND WATER

BENEFICIAL USE IRRIGATION

From
4/01

To
to 11/01

Diversion Rate
4,560 cfs
4,560 cfs

Diversion Volume
912.0 af
912.0 af

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SESESE Sec 5 Twp 01S Rge 36E BINGHAM County

PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01S	36E	4					1.0		12.0	24.0	8.0	9.0	31.0						83.0
01S	36E	5				3.0	1.3												
01S	36E	8	5.0	17.0	5.0	18.0								16.0	4.0	13.0	27.0		83.0
01S	36E	9									2.0			32.0	1.0		2.0		80.0
POU Total Acres:			228.0																2.0

CONDITIONS OF APPROVAL

- Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

Transfer No. 81960



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

November 21, 2018

RECEIVED
NOV 23 2018

Department of Water Resources
Eastern Region

Blake Jordan
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

Re: *Transfer to Simply Rearrange the Place of Use for Water Right No. 35-8021.*

Dear Blake:

Enclosed for processing is a completed *Application for Transfer* that simply proposes to rearrange the place of use for Water Right No. 35-8021 to aid in future transfer applications that will move portions of this water right to the Blackhawk Subdivision. The shapefile did not match with the underlying irrigated acres because of a slight projection error, and to avoid any confusion about which acres are not to be irrigated, we believe that it is necessary for this transfer to be filed.

Because the transfer does not propose to change the point of diversion for the water right, it is our understanding under department policy that it not be advertised, and to streamline the processing of another transfer to move an additional five acres which will be filed in the coming weeks, we request that this is processed as soon as you are able. As shown in the enclosed documents, the transfer only results in the shifting of seven acres, and for that reason, we have included a filing fee of \$200 as the rate per acre for this water right multiplied by the shifting of only seven acres falls below the 0.2 cfs amount for this fee.

Finally, I assume you will assign processing of this transfer to another agent within the department, and once you do, please have them email me and I can email them the shapefile for the revised place of use. We appreciate your assistance in this matter. Please let me know if you have any questions or concerns.

Best regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

g:\wpdata\rlh\19881-000 blackhawk - wr transfers\transfer applications\application for transfer #4 (clean up)\2018.11.21 jordan.docx